



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

MINUTES
OF THE
NATURAL RESOURCE COMMISSION
MEETING
DECEMBER 11, 2008

IOWA DEPARTMENT OF NATURAL RESOURCES
Henry Wallace Building
502 E. 9th Street
Des Moines, IA 50319

Call to Order

The meeting of the Natural Resource Commission was called to order by the NRC Commission Chairperson, Bill Bird, at 8:30 a.m. on Thursday, December 11, 2008.

Commissioner Bird welcomed the public to the meeting and reviewed the public speaking forum guidelines. He also thanked the DNR Communications staff on behalf of the NRC Commission for the prior day educational presentations. Presentations included: Communications Bureau Chief Kevin Baskins, review the Iowa Outdoors magazine as well as highlighted the partnership the DNR has developed with the Boys and Girls Club of Central Iowa on youth programs. Julie Sparks spoke about the Outdoor Women in Iowa program. Barb Gigar spoke about the Fish Iowa Program. AJ Winter from the Springbrook Conservation Education Center spoke about the HACC (Hunting and Conservation Camp) and MOE (Mentored Outdoor Experience) programs. Joli Vollers spoke about the Outdoor Journey for Girls and Hunter Education programs. Matthew VanGundy from the DNR IT helpdesk conducted email training for the NRC Commissioners as they now have DNR email addresses that will be posted on the DNR website as another way for the public to contact them with inquiries. The new DNR Deputy Director, Pat Boddy also made a surprise appearance to meet the NRC Commissioners.

Members Present

William Bird
Gregory Drees
Richard (Kim) Francisco
Elizabeth Garst
Tammi Kircher
Carol Kramer
Janelle Rettig

Members Absent

None

1. Approve Agenda

Moved – Commissioner Garst
Seconded - Commissioner Francisco
Motion – Carried by unanimous vote

2. Approve Minutes of 08/14/08

Moved - Commissioner Kramer
Seconded - Commissioner Drees
Motion – Carried by unanimous vote

3. Director's Remarks

- **Staffing** – Patricia Boddy has been hired as the new DNR Deputy Director. She is currently the Polk County Conservation Director. She has an excellent educational background as well extensive experience in water resource, agriculture, engineering and journalism. She will officially start middle to late January 2009. Legal Bureau Chief, Ed Tormey has been named the interim Deputy Director and has signature authority. Customer Service Bureau

Chief, Sally Jagnandan will continue as the interim Division Administrator for Management Services, application process will continue for this position.

- **Retirements** – Fisheries Bureau Chief Marion Conover (38 years) and Law Enforcement Bureau Chief Lowell Joslin (30 years) will both retire as of December 25, 2008. Arnie Sohn from the engineering department and Special Assistant to the Director's Office Lyle Asell will also be retiring. Even though a hiring freeze has been placed upon state agencies, these are considered to be mission critical positions and as such will be allowed to be filled with approval from the Department of Management Services. Commissioner Garst inquired about reorganization possibilities. Director Leopold responded that once Deputy Director Boddy is on board a management retreat will be held to discuss ideas of restructure and streamlining in some areas. It is not anticipated that there will be major revisions but small changes that will better suit the needs of the DNR currently and in the future. The retreat will include the Director, Deputy Director, Division Administrators and possibly a few other key staff members.
- **Symposium** – Ten state leaders participated in the conference on 'Understanding the States Roll in Climate Change, Energy & Sustainable Practices' held at Honey Creek Resort in November. Combined with the June conference held in Philadelphia fifteen states have now participated. Several other state leaders have expressed interest in participating in discussions on renewable energy, energy efficiency, and sustainability within park systems but are under budget spending freezes preventing them from traveling. Historically there has been no coordinated voice for all managers nationally of state resources. Discussions on creating a national organization called 'States Alliance for Natural Resources' are taking place. The next meeting is to be held in March in Maryland with two days to discuss how to organize and then two days in Washington to discuss how to influence climate change legislation.
- **Flood** – Discussion on future flooding are taking place with several Legislators and Senators. The Department of Economic Development co-hosted a conference with the DNR to discuss logistics of who will be responsible for what, who will be paying for it, where will funding allocations come from and what FEMA will cover or not cover are also priority topics.
- **River Basin Management Plan and Water Quality Index** – How water quality will be determined in the future is a topic of discussion. The current Lakes Restoration Program has been a great example of the joining of scientific technical and socioeconomic issues, prioritizing and using the monies to complete lake projects. The same system could be used statewide by dividing the state into river basins, assigning basin coordinators, further breaking basins down into sub basins, prioritizing, and then fixing issues. The Water Resources council will meet the week of December 18th to discuss the proposed water basin plan. Last week at the EPC meeting the impaired waterways report was released. There are now 541 impaired water bodies in the state of Iowa. Recovery and restoration are a priority, it is hoped that a coordinated effort among several state agencies such as the DNR, Division of Soil Conservation within IDALS will enable appropriate monies to be spent. Commissioner Garst asked about nutrients standards, were some of the impaired water bodies on the list due to this issue? Director Leopold responded they were partially, but also because nutrients feed into other impairments. The DNR has contracted Dr. Burkhardt from Iowa State University and he is working with a group of PhD's and has developed a nutrients standard for recreational usage on lakes that will be ready to go under rule making

- **President Elect Obama Administration** – The DNR is anxiously waiting to see what political appointee changes will transpire and what those changes will mean for the DNR. Key positions of interest are; Head of Interior, Head of Agriculture, and Head of EPA. So far they are seeing really good things coming from the transition team.
- **Iowa Parks Foundation** – Their stated goal is ‘To have all State Parks by the year 2020 to their premier condition.’ This would require approximately 100 million dollars from a combination of funds raised and funds designated by state legislature.

4. Honey Creek Resort State Park Monthly Update

Michelle Wilson, Honey Creek Resort project leader gave an update on the resort.

- **Construction** – The cabins are in the 20th week of construction out of 40 weeks projected and are approximately 60% completed. The cabins are in various stages of construction, some have just been framed, some are sided, and twelve have heat installed. A Spring 2009 opening is on schedule. Central Group plans to start taking reservations for June, but it may be possible to reserve sooner if things stay on schedule with construction. Interest in the cabins is apparent through the amount of inquiries Central Group has received. Individuals who are interested in making cabin reservations are being directed to make lodge reservations and Central Group is noting guest preference for a cabin so if one becomes available they may contact the guest to move the reservation to a cabin.
- **Lodge** – There are punch list items that need completed. Discussions have taken place with TSP and Hanson Company to get these items taken care of ASAP. Items include: shower heads falling off, furnace noise in rooms, guests are getting locked in their bathrooms. The plumbing company contractor Proctor Mechanical is working on a solution on problems with the low flow shower heads. Michelle Wilson has stressed the importance of getting these issues resolved now as it is bad PR as well as hurting the resort revenue when compensation is given to guests due to these issues. Central group has paid out approximately \$500 in compensation to guests due to these issues. Last week schedules were received from TSP and Hanson Company on what items have been completed and when remaining outstanding items would be completed.
- **Hardscape** – Don Labate gave an update on the hardscape. Patio and sidewalks are supposed to be complete by December 12th. The patio staircase is almost complete and should be complete by December 25th leaving only the railing to be installed after the first of the year.
- **Docks** – A meeting with the Army Corps of Engineers is being scheduled in January to discuss the dock system. Information from the dock fabricator has been received and a decision on arrangement of the docks needs to be made and if a breakwater will be needed to slow wave action to dock area. Commissioner Rettig asked why a breakwater would be needed and why was it not included in the original plan design. Michelle Wilson responded that she was unsure why it had not been included but is researching. She will be looking at the original design as well as speaking with the engineers. Protecting the docks as well as cost involved to install a breakwater are both concerns. Don Labate added they are looking at all options; everything from adding a breakwater to rearranging configuration of the dock locations. Currently one finger of the dock is currently underwater; and this needs to be

taken care of immediately. Jim Lawson is on site today working with the Army Corps of Engineers on a solution. Heavy equipment will be needed to lift the dock out of the water. It was damaged earlier this fall due to vandalism. Until the water level on Lake Rathbun is lowered the dock can not be secured to the shore. Bill Duey with the Army Corps of Engineers is working very hard to maintain the lake level for construction. It will be spring 2009 before Hanson Company can complete the dock area.

- **Budget** – Handouts of Budget Report & Central Group income reports were supplied to the NRC Commissioners. Starting in January these reports will be part of the NRC Commission agenda packets for upcoming meetings. Attorney Kelly Myers is reviewing the reports to assure they are in compliance with the management agreement. Budget and Finance Bureau Chief, Jennifer Nelson updated the NRC Commissioners on the November Bond Authority meeting/tour of Honey Creek Resort, the trustee, auditor, and treasurer were all pleased with the site. Jennifer Nelson then went on to review the Central Group report titled 'Summary Income Statement'. She explained that the time of year that the resort opened was not peak season and they knew that going in so it had already been anticipated there would be a deficit of approximately \$93,000.00. It was largely due to the start up costs of stocking the restaurant as well as low activity at the lodge. Commissioner Rettig expressed concern about the budget analysis reports accuracy. Discussion surrounding the report and how to accurately read the information transpired between Jennifer Nelson and the Commission. Commissioner Garst would like to see the annual budget and how the report information compares to the cashflow. Commissioner Rettig pointed out that the resort lost \$33,520 more than expected in October; this was the first full month the resort was open and the numbers reflected at the restaurant and lodge were not what had been previously anticipated. She expressed support of the resort but has reservations about the report information and would like to have a better understanding. Commissioner Garst suggested that comp rates be stopped as the average room rate in September was below 'normal' rate. Michelle Wilson, Jennifer Nelson and Kelly Myers have monthly meetings with Lee Fundanet from Central Group and will be addressing the Commission concerns and report back. She hopes to have met with him again prior to the next NRC Commission meeting in January. Michelle Wilson would like to have Lee Fundanet attend the next NRC meeting to review the reporting information. Commissioner Garst would like to see the actual occupancy rate per month reflected in future reports. Michelle Wilson has requested that Central Group provide monthly expected revenues based on future reservations for the lodge, cabins and conference facilities. A new Director of Sales & Marketing is being sought after. Central Group is working on marketing & publicity to draw people in on slow days. The DNR marketing area will be working with Central Group on marketing and promotion.
- **Going Green** – Examples of interior materials that will be utilized for the cabins were shown. These materials were selected because of the 'Green' factor. Green companies will be selected to work with the new 'Green Team' that the DNR and Central Group has created to ensure that whenever possible green materials are used and information is provided to the public letting them know of the green materials.
- **Landscaping** – A local Iowa company (Arpeggio from Mingo) that manufactures vermicomposting material is being used for landscaping at the resort. Informational materials in reference to vermicomposting were provided to the NRC Commissioners.

- **Rathbun Lake Resort (RLR) agreement** – On the January NRC Commission meeting agenda there will be an item in reference to the DNR/RLR agreement to establish fund raising collection and spending by the RLR.
- **Lighting** – Commissioner Garst asks that the light pollution issue be reviewed and fixed. She also hopes that the cabin outdoor lighting will not have the issues from the beginning.

Public Participation

None

5. Construction Projects

5.1 Stephens State Forest, Whitebreast Unit, Lucas County – Pond Outlet Replacement

Bids were opened November 20, 2008, for the following project:

This project consists of the replacement of the pond outlet pipe, construction of a sediment basin, and other related work as required by the Plans and the DNR Construction Inspector.

Project was designed and will be inspected by Jason Kruse, District Inspector. DNR estimate is \$40,000. Funding will be provided by Federal Dingle Johnson and REAP Land Management Forestry (Capital Link #154). 20 sets of plans were issued. 7 bids were received.

Kinman Company Inc.	Oskaloosa, IA	\$34,231.80
Muhs Trucking & Excavating	Birmingham, IA	\$43,926.24
Jay & Garrett Inc.	Leon, IA	\$44,181.53
Vanderpool Construction Inc.	Indianola, IA	\$58,085.79
C.L. Carroll Company Inc.	Des Moines, IA	\$67,385.00
Kevin Kent Construction	Lucas, IA	\$85,932.00
Keller Excavating	Boone, IA	\$99,542.00

Staff recommends the acceptance of low bidder, Kinman Company Inc.

Moved – Commissioner Francisco
 Seconded – Commissioner Kramer
 Discussion – Commissioner Francisco inquired as to why native seeding was not being used. Don Labate responded that it was recommended by NRCS for use in areas such as pasture not in the middle of a forest. Commissioner Francisco explained some information he had received to the contrary. Don Labate said they would research further options to utilize native seeding.
 Motion – Carried by unanimous vote

5.2 Lake Wapello State Park, Davis County – Lake Restoration

Bids will be opened December 4, 2008, for the following projects:

This project consists of the construction of in-lake fish habitat, shoreline deepening and armoring, new jetties, modifications to existing jetties, repair of several silt dikes, one new silt dam, boat ramp improvements and incidental work as required by the Plans and the DNR Construction Inspector. Purpose of this project is to improve fish habitat throughout the lake bed, construct three new jetties, improve habitat adjacent to existing jetties, create numerous spawning beds for pan fish production and repair and construct several silt ponds within the watershed.

Project was designed by Ken Jackson, DNR Engineer, and will be inspected by Jason Kruse, District Inspector. DNR estimate is \$395,440. Funding will be by Federal Dingle Johnson and Lake Water Quality Improvement (Capital Link #149).

Staff recommends the acceptance of the bid to be presented at the NRC Meeting.

Moved – Commissioner Retting

Seconded – Commissioner Francisco

Discussion – Commissioner Bird asked if the dams that were reconstructed in 1992 were still functioning. Yes, but if it were to go much further it could result in a total loss. Conservation Division Administrator Ken Herring commented that the picture included with the item was a great example of silt structure working. Commissioner Drees asked how large the dam was and if there would be partial dredging. It is approximately 30 to 75 acres and there would not be partial dredging, material would be removed and pushed into deeper water. Commissioner Bird commented on the renovation in the early 90's and the assistance they had from the Army Corps of Engineers, it had been a training exercise for the Army Corps of Engineers and saved thousands of dollars by utilizing them. He asked that this partnership be considered again. Commissioner Drees asked if the lake was completely drawn down now. It was stated that there is only a small creek running through it now. The commission would like to see future agenda items for construction project contract approval to include information if it is a subsequent project from a previously approved item.

Motion – Carried by unanimous vote

5.3 Green Valley State Park, Union County – Spillway Renovation

This project consists of the reconstruction of the existing concrete spillway to prevent rough fish from entering the lake and repair of portions of the remainder of the spillway and incidental work as required by the Plans and the DNR Construction Inspector. Purpose of this project is to eliminate rough fish access into the lake, improving water quality and increasing viability of game fish populations.

Project was designed by Kevin L. Arp of Kirkham-Michael and will be inspected by Mark Johnson, District Inspector. K-M estimate is \$840,000. Funding will be by Lake Water Quality Improvement (Capital Link #97).

Staff recommends the acceptance of the bid to be presented at the NRC Meeting.

Moved – Commissioner Rettig

Seconded – Commissioner Kircher

Discussion – Commissioner Rettig asked about the trail access. Don Labate said the trail was also on state property. Commissioner Rettig commended the staff embracing pioneer parks and giving the public alternative ways to gain access to the park other than driving.

Motion – Carried by unanimous vote

6. Loess Hills State Forest, Harrison County – William & Shirley Harl

The Natural Resource Commission's approval is requested to purchase a tract of land located in Harrison County adjacent west and north of state-owned and managed Loess Hills State Forest. William and Shirley Harl offer this 80-acre tract for the appraised price of \$156,000.

Donald Kearn, Licensed Appraiser of Atlantic, Iowa, submitted the appraisal. Rick Hansen negotiated the purchase agreement.

This property is located one mile northeast of Little Sioux in northwestern Harrison County. The tract is primarily forested and reflects gently sloping to very steep topography. The property's outer rim/ridge offers a scenic view of the Missouri River bottomlands. A picturesque grassed valley is located in the northeast quadrant of the tract. A former stagecoach road remains visible through the southeast region of the tract. The property is absent building improvements. The property is bordered on the west by Larpenteur Memorial Road, a designated Scenic Byway.

This aesthetic tract will increase the Little Sioux Unit to over 3,430 acres, and will provide wildlife habitat, improve surface water quality, and enhance public recreation to this area. The Forestry Bureau will manage the property in accord with the area management plan.

Acquisition funding will be provided by federal Transportation Improvement (TI) funds (80%) with the remainder from the DNR Forestry Bureau. Incidental closing costs will be the responsibility of the Department.

Staff recommends approval of the land acquisition.

Moved – Commissioner Drees

Seconded – Commissioner Francisco

Discussion – Commissioner Drees inquired about the funding mechanism. Forestry Bureau Chief Paul Tauke replied that the Forestry Bureau will provide 20% or \$31,200 from the fire engine in California which generated \$50,000. The remaining 80% will come from the federal TI that will generate \$.20 on the dollar. Paul Tauke introduced Loess Hills State Forester Brent Olson. Conservation and Recreation Division Administrator Ken Herring commented on the tour he participated in this fall and offered to set up meeting/tour for any of the NRC Commissioners interested in visiting Loess Hill State Forest.

Motion – Carried by unanimous vote

7. Contract Extension with Erickson Management Company – Banner Shooting Range

The Department requests Commission approval of a one-year extension to the existing agreement between the Iowa Department of Natural Resources and Erickson Management Company for the management of Banner Shooting Range.

The contract requires Erickson Management to provide the day-to-day management and oversight the operations of Banner Shooting Range and to pay a quarterly concession fee of 10% of all shooting related fees, not to exceed \$1500 per quarter. This extension will modify the length of the agreement, extending it for a period of one year from the original termination. This extension will enable the continued operation of the range.

Moved – Commissioner Francisco

Seconded – Commissioner Drees

Discussion – Commission Drees asked why it was not a longer time extension. Law Enforcement Bureau Chief Lowell Joslin replied they had had some issues with flooding this spring and that Erickson Management Company is still learning so an extension of only one year is what the Law Enforcement Bureau is comfortable with at this time. A longer extension may

be requested at the end of the on year.
Motion – Carried by unanimous vote

8. Notice of Intended Action – Chapter 78, Ginseng Harvesting and Sale

The Commission is requested to approve this Notice of Intended Action to amend Chapter 78, Ginseng Harvest and Sales. Chapter 78 provides the regulations for the harvesting, growing and dealing of ginseng in the state of Iowa. Ginseng is a plant species that is currently protected by the Convention on the International Trade of Endangered Species and regulated by the United States Fish and Wildlife Service. The Department is statutorily obligated to adopt rules to govern the harvest and sale of Ginseng in the state.

The proposed amendment will rescind and replace the existing chapter with the attached rules. These proposed changes better define wild and cultivated ginseng, green and dry ginseng, and those permitted to harvest and sell it, and prohibit harvesting or planting ginseng on state-owned and state-managed lands. This amendment also clarifies fees charged for licenses issued under these rules, restrictions and prohibitions for harvesting wild ginseng, and recordkeeping and reporting of ginseng transactions.

NATURAL RESOURCE COMMISSION [571]

Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 78, “Ginseng Harvesting and Sale,” and adopt new Chapter 78, with the same title, Iowa Administrative Code.

The proposed amendment better defines wild and cultivated ginseng, green and dry ginseng, and those permitted to harvest and sell it, and prohibits harvesting or planting ginseng on state-owned and state-managed lands. This amendment also clarifies fees charged for licenses issued under these rules, restrictions and prohibitions for harvesting wild ginseng, and recordkeeping and reporting of ginseng transactions.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 3, 2009. Such written materials should be directed to Mimi Habhab, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, 50319-0034; fax (515)281-6794; or e-mail Inga.Foster@dnr.iowa.gov. Persons who wish to convey their views orally should contact Mimi Habhab at (515)281-5034 or at Ms. Habhab’s office on the fourth floor of the Wallace State Office Building.

Also, the Department will hold a public hearing utilizing the Iowa Communications Network (ICN) on February 4, 2009, at 6 p.m. The ICN locations at which the public may participate are as follows:

State Historical Building Room #157 - Heritage Classroom C 600 East Locust Des Moines, Iowa
Iowa Western Community College Room #112 2700 College Road Council Bluffs, Iowa
Eastern Iowa Community College District Room #300 326 West 3rd Street Davenport, Iowa

Decorah Public Library 202 Winnebago Street Decorah, Iowa
Central Community Jr.-Sr. High School Room Number: 119 400 First Street NW Elkader, Iowa
Fort Dodge Public Library 424 Central Avenue Fort Dodge, Iowa
Clayton Ridge Middle School 502 W. Watson Garnavillo, Iowa
Iowa City High School 1900 Morningside Drive Iowa City, Iowa
North Iowa Area Community College Room #119 500 College Drive Mason City, Iowa
Hawkeye Community College Tama Hall 1501 E. Orange Road Waterloo, Iowa
Southeastern Community College Trustee Hall Room #528 1500 West Agency West Burlington, Iowa

At the public hearing, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any person who intends to attend a public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 456A.24(11).

The following new chapter is proposed.

Rescind existing 571—Chapter 78 and adopt the following new 571—Chapter 78:

CHAPTER 78 GINSENG HARVESTING AND SALE

571—78.1(456A) Purpose. The purposes of these rules are to establish a program for the harvesting and sale of American Ginseng subject to the Convention on International Trade in Endangered Species (CITES) of wild fauna and flora, to provide for the time and conditions for harvesting the plant, and to provide requirements for the registration of growers, dealers and exporters, the records kept by dealers and exporters, and the certification of a legal taking. The goal of the department's program is to ensure that American Ginseng, a slow-growing plant with increased demand due to its medicinal and commercial value, remains a sustainable resource in the state of Iowa.

571—78.2(456A) Scope. These rules shall apply to all persons harvesting, cultivating and dealing American Ginseng in Iowa. However, these rules are not intended to apply to the trade or

trafficking of American Ginseng that has been lawfully obtained and been processed, prepared, packaged or labeled in a manner intended for its final consumptive use.

571—78.3(456A) Definitions. All words and phrases used in these rules shall have their ordinary and customary meaning, except that the following words and phrases shall be defined as follows:

“Controlled conditions” means a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding, or protection from weather and artificial or natural shade and or light.

“Cultivated ginseng” means ginseng that is nurtured, artificially propagated or maintained under controlled conditions from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that has been derived from cultivated parental stock.

“Cultivated parental stock” means the ensemble of plants grown under controlled conditions that are used for reproduction and must be maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild.

Cutting or division. A plant grown from a cutting or division is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

“Dealer” means all persons who deal ginseng, which includes without limitation buying, selling, purchasing, holding, brokering, billing for, bartering, trading or otherwise receiving payment for wild or cultivated ginseng in Iowa for the purpose of selling or otherwise transacting wild or cultivated ginseng. The term “dealer” includes all persons, including without limitation harvesters, who sell ginseng to any person other than a dealer licensed pursuant to these rules or lawfully licensed in another state.

“Dealers permit” means a permit issued to a dealer by the department under these rules.

“Department” means the Iowa department of natural resources.

“Director” means the director of the Iowa department of natural resources or a designee.

“Ginseng” means all parts of the American ginseng (*Panax quinquefolius*) plant, including without limitation roots, leaves and seeds, which may be cultivated or wild. Ginseng, however, for purposes of these rules does not mean those parts of the American ginseng plant that have been processed.

“Green ginseng” means a root of wild ginseng from which the moisture has not been removed by drying. For the purpose of this chapter when calculating the amount of dried ginseng root which can be derived from green ginseng root, a ratio of three and three-tenths to one (3.3:1) by weight will be used.

“Grower” means a person who grows cultivated ginseng for the purpose of selling the ginseng.

“Growers permit” means a permit issued under these rules to a grower.

“Harvester” means any person who harvests, possesses, transports, cuts, gathers, destroys, digs or roots up wild ginseng for the purpose of selling the ginseng or for personal reasons or personal use.

“Harvesters permit” means a permit issued under these rules to a harvester.

“Nonresident” means a nonresident as defined by Iowa Code section 483A.1A.

“Permits” mean dealers permits, growers permits and harvesters permits issued under these rules.

“Resident” means a resident as defined by Iowa Code section 483A.1A.

“Wild ginseng” means an unprocessed plant, dry root or live root, seed or other part of ginseng, which is growing in or has been collected from its native habitat, including ginseng plants which have arisen from a cultivated seed that is planted in the wild, or which have been transplanted from a cultivated setting into the native habitat.

571—78.4(456A) Season for legal harvest. The season for legal ginseng harvest is September 1 to October 31.

571—78.5(456A) General prohibitions.

78.5(1) Harvest. No person shall, between November 1 and the following August 31, harvest dig, cut, root up, gather, intentionally disturb, or destroy ginseng, either wild or cultivated ginseng.

78.5(2) Sale. A person shall not sell ginseng between April 1 and August 31.

78.5(3) Sale and possession of green ginseng. A person shall not possess or transact green ginseng on or between November 21 and August 31, unless otherwise provided for by these rules.

78.5(4) State-owned and state-managed lands. In an effort to conserve and protect native stands of wild ginseng, the department shall prohibit introduction of non-native ginseng stock on state-owned and state-managed lands under the jurisdiction of the commission, except in narrow circumstances. As such, a person shall not, at any time, possess, harvest, dig, cut, root up, gather, plant, propagate, intentionally disturb or destroy ginseng or ginseng seed on state-owned and state-managed lands under the jurisdiction of the commission. Nothing in this section shall prohibit the department from taking measures itself on state-owned and state-managed lands under the jurisdiction of the commission to conserve and protect native wild ginseng, which may include without limitation planting and possessing seeds.

78.5(5) Certificate of origin. No ginseng dug, harvested or purchased outside the borders of Iowa which is not accompanied by a valid certificate of origin pursuant to rule 571--78.9(456A) shall be allowed to enter or be in the State of Iowa lawfully.

571—78.6(456A) Ginseng permits. The department shall issue growers permits and dealers permits upon the filing of a signed and complete application for each permit respectively. Applications shall be submitted on the form provided by the department and accompanied by payment of the appropriate fee, if applicable. Harvester permits are available for sale through the department's electronic licensing system of Iowa, which may be accessed at license agents throughout the state or on the department's website. The department shall not issue any permit if it determines such a permit or license will be detrimental to the survival of ginseng or will otherwise be in contravention of the laws of this state or the applicable federal laws. No person shall carry, possess or use any other person's permit issued pursuant to these rules, except as specifically provided by these rules.

78.6(1) Growers permits.

a. All persons who grow cultivated ginseng are required to obtain a permit from the department to legally grow cultivated ginseng. There shall be not fee for the permit except for the charge associated with the electronic licensing system that is used to issue the permit.

b. Applications for growers permits shall be made on the form provided by the department, shall be complete to be considered, and shall be executed by the person seeking the growers permit.

c. Growers permits shall be valid for five years from the date of issuance.

d. Applications for permit renewals must be filed with the department within 60 days of expiration of existing permits.

78.6(2) Dealers permits.

a. All dealers in Iowa shall have a valid dealers permit issued by the department. Paid employees and family members of a dealer working at a dealer's primary place of business as identified on the dealers permit may operate legally under the dealers permit of the dealer. For purposes of this subrule, family members include the dealer's spouse, domestic partner, parents, siblings, and children.

b. Applications for dealers permits shall be made on the form provided by the department, shall be complete to be considered, shall be executed by the person seeking the dealers permit, and shall be

accompanied by a \$250 permit fee for residents and a \$500 permit fee for nonresidents. In addition, there shall be an additional charge associated with the electronic licensing system that is used to issue the permit, if applicable. The department's issuance of the permit may take in excess of 60 days to complete.

c. Dealers permits shall be valid from September 1 until August 31 of the following year.

d. Dealers permits must be shown to the department when certifying ginseng and must be shown to harvesters or other dealers when buying ginseng.

78.6(3) Harvesters permit.

a. All persons who harvest wild ginseng must have a valid harvesters permit issued by the department and shall produce such permit upon the request of the department while engaged in harvesting activities, including the selling of the harvested ginseng.

b. Applications for harvesters permits shall be made on the form provided by the department, unless the harvester permit is purchased through the department's electronic licensing system of Iowa, and accompanied by a fee of \$35 for residents and \$65 for non-residents. In addition, there shall be an additional charge associated with the electronic licensing system that is used to issue the permit. Applications and harvester permits shall be signed by the applicant.

c. Harvesters permits shall be valid on and between September 1 and March 15 of the following year.

d. Harvesters with harvesters permits may sell wild ginseng from September 1 through March 15 of the following year.

e. Iowa harvesters with valid harvesters permits may retain no more than four ounces of dry wild ginseng, or equivalent amount of green ginseng or combination thereof, for personal consumption for one year beyond the expiration date of the permit. All wild ginseng possessed pursuant to this paragraph shall be for the harvester's personal use only and may not be lawfully sold.

f. No person may sell, barter or otherwise offer for sale any ginseng that has been unlawfully collected, obtained or possessed in violation of this chapter, the Code of Iowa, or the federal Code of Federal Regulations.

78.6(4) Duplicate permits. Duplicate growers permits, harvesters permits and dealers permits may be issued upon application to the department and the payment of five dollars plus any charges assessed to use the electronic licensing system to issue the duplicate permit, if applicable.

571—78.7(456A) Dealer's records.

78.7(1) Contents of records. Each permitted ginseng dealer shall keep individual, accurate, legible and complete records of each ginseng transaction on forms prescribed by the department. The department shall provide a reasonable number of these forms at no cost to the dealer. The dealer's record of each ginseng transaction shall include:

a. Date of transaction; and

b. Name and address of buyer or seller, whichever is applicable for the transaction; and

c. The harvesters permit or dealers permit number, if dealer is buying ginseng in the transaction; and

d. Description of the ginseng root transacted, including the weight of ginseng root transacted, as determined if it is or were dried, and whether the ginseng is dried or green; and

e. Name of the county or counties where the ginseng was harvested if purchased from a harvester; and

f. A copy of the certificate of origin signed by the seller, if applicable; and

g. Date in which the ginseng bought or sold was harvested; and

h. Additional information as may be requested by the department and included on the department's form.

78.7(2) Monthly reporting. Each dealer shall submit to the department copies of all records required by subrule 78.7(1) on a monthly basis, no later than the fifteenth day of each month.

78.7(3) Annual reporting. Dealers shall file an annual report with the department, on forms provided by the department, by April 15 including the following information:

- a. A summary of all transactions that have occurred in Iowa from September 1 through March 31 of the following year; and
- b. Inventory of any roots remaining in the dealer's possession in Iowa as of April 1, including certified weight and designation as wild ginseng or cultivated ginseng; and
- c. If applicable, a statement that the dealer has no inventory of ginseng in Iowa as of April 1 if the dealer has no inventory of ginseng as of April 1.

Any certifications regarding weight required by this subrule shall be done through the department or its agents at locations designated by the department, upon appointment.

78.7(4) Record retention. All records required by this subrule shall be kept by the dealer for a period of three years after the expiration of the dealers permit.

571–78.8(456A) Dealer locations.

78.8(1) Generally. Ginseng dealers shall deal only at the location specified on the dealers permit or at the place of business specified on the license of any other dealer who holds a dealers permit in Iowa.

78.8(2) Dealer location permits. A dealer may deal at locations other than those provided for in subrule 78.8(1) with a location permit. Dealers may obtain location permits from the department. Each location permit shall be valid only for the location specified on the location permit and shall entitle the dealer to operate at that location in addition to the location specified in the corresponding dealers permit. The department shall, upon application and the payment of the applicable location permit fee, furnish a location permit to the dealer. The dealer location permit fee shall be \$5 for residents and \$50 for nonresidents, plus any charge assessed by the electronic licensing system used to issue the license, if applicable.

78.8(3) Duplicate location permits. Duplicate location permits may be issued upon application to the department and the payment of five dollars, plus any charges assessed to use the electronic licensing system to issue the duplicate permit, if applicable.

571—78.9(456A) Certificates of origin.

78.9(1) Shipments. Shipments of ginseng to points outside the state of Iowa by growers, harvesters and dealers shall be accompanied by a certificate of origin, or shipping certificate, which certify the ginseng was taken lawfully.

- a. The department will issue certificates of origin for cultivated ginseng to growers or dealers upon application on the department's forms by the permit holder and based upon the completeness and sufficiency of permit holders' applications, and the permits holders' compliance with the requirements of this chapter. The department will provide application forms.

- b. The department will issue certificates of origin for wild ginseng to harvesters upon application on the department's forms by the permit holder and based upon the completeness and sufficiency of harvesters permit holders' applications, and the harvesters permit holders' compliance with the requirements of this chapter. The department will provide application forms.

- c. The certificate of origin for wild ginseng will be issued by the department and its agents after the root has been weighed and certified by the department or its agents at one of the locations designated by the department, upon appointment.

- d. Growers, harvesters and dealers seeking a certificate of origin must produce a valid permit for their respective capacities to receive a certificate of origin. This means that a grower must produce

a valid growers permit, a harvester must produce a valid harvesters permit and a dealer must produce a valid dealers permit.

78.9(2) Fees. The department shall issues certificates of origin free to growers and dealers who lawfully possess growers permits and dealers permits, respectively, and for a fee of \$5 for each certificate to harvesters who lawfully possess harvesters permits.

78.9(3) Compliance. Certificates of origin shall be issued only to permit holders who have complied with the requirements of this chapter, including without limitation requirements regarding plant size for wild ginseng

78.9(4) Wild ginseng originating in another state.

a. No person may ship out of this state to a foreign country wild ginseng that originates in another state or foreign country unless the wild ginseng is accompanied by a valid certificate of origin issued by that other state or foreign country. No person may ship out of this state wild ginseng that originates in another state under a certificate of origin issued under this subsection.

b. No resident may import for purposes of dealing wild ginseng that originates in another state unless the wild ginseng is accompanied by a valid certificate of origin from the other state. Original certificates of origin shall remain with the wild ginseng at all times.

c. If a resident dealer receives wild ginseng that originated in another state and if a certificate of origin issued by that state does not accompany the wild ginseng, the dealer shall return the wild ginseng to the sender within 30 days after its receipt.

d. A dealer shall maintain a copy of the certificate of origin with the record of transaction.

e. It shall be lawful for any person to have in possession any wild ginseng lawfully harvested or purchased outside the state and lawfully brought into the state so long as they possess a valid certificate of origin.

571—78.10(456A) Inspection.

78.10(1) Any permit issued under this chapter shall be made available to the department, director, officer appointed by the department, peace officer, or, in the case of a harvesting permit, the owner in person in lawful control of the land upon which the licensee may be harvesting wild ginseng, at any time upon request. Any failure to carry or refusal to show or exhibit a valid permit while engaged or presumed to be engaged in the harvesting, growing or dealing ginseng in Iowa shall be a violation of this chapter. However a person charged with violating this rule shall not be convicted if the person produces to the department or to a court officer, within a reasonable time, a valid permit issued to that person and valid when the person was charged with a violation of this rule. Failure to make such permits available is a violation of these rules.

78.10(2) Any records required by this chapter to be maintained or submitted shall be produced for inspection upon request of the department, director, officer appointed by the department, or peace officer. Failure to maintain records or to submit reports as required by these rules is a violation of these rules.

78.10(3) Any person or dealer who has in possession any ginseng or part thereof shall upon request of the department, director, any officer appointed by the department, or peace officer show it to the department, director or officer; a refusal to do so is a violation of this chapter.

571—78.11(456A) Restrictions and prohibitions for harvesting wild ginseng.

78.11(1) Every person shall have in possession a valid permit issued by the department to harvest wild ginseng for the current harvest season when harvesting, cutting, rooting up, gathering, destroying, possessing or transporting wild ginseng.

78.11(2) No person shall harvest a plant unless the plant possesses three (3) or more true leaves or prongs and a flowering or fruiting stalk with red berries. For purposes of this rule, true leaves or prongs mean a compound leaves that include five (5) leaflets consisting of three (3) large leaflets and two (2) small leaflets. If, after removing a plant with the requisite leaves or prongs, as described above, it is determined the root has less than five (5) internodes, or root sections containing a stem scar, on the plant's rhizome, the person shall return the plant to the soil and make best efforts to return the plant and the surrounding area to its condition prior to harvest. In no event shall a person harvest or possess wild ginseng roots unless the root has at least five (5) internodes, or root sections containing a stem scar, on the plant's rhizome.

78.11(3) When harvesting wild ginseng, the entire plant, except the fruit and seeds, shall be retained with the plant until the plant is taken to the harvester's residence or place of business, as identified in the harvesters permit.

571—78.12(456A) Additional restrictions and prohibitions for wild ginseng.

78.12(1) Seeds.

- a. All persons harvesting wild ginseng shall plant all seeds collected from such plants within one-hundred (100) feet of the parent plant.
- b. A person shall use no other tool than their finger to plant seeds from wild ginseng, pushing it to a depth of no more than two inches deep into the soil.
- c. A person shall not possess or transport seed of wild ginseng more than one-hundred (100) feet from the site of the parent plant.

78.12(2) Dealing.

- a. A person shall not purchase or sell wild ginseng if the person knows or should have known the ginseng was harvested illegally.
- b. A dealer may not purchase wild ginseng without inspecting the harvesters permit. A dealer may not purchase wild ginseng if the dealer knows or should have known the harvester has violated this chapter.
- c. A person shall not buy, deal, purchase or otherwise transact seeds from wild ginseng.

571—78.13(456A) Compliance with laws. A person shall not violate any state, federal or local laws in harvesting, dealing or shipping ginseng.

571—78.14(456A) Violations of this chapter.

78.14(1) A person violating this chapter shall be subject to a schedule fine pursuant to Iowa Code section 805.8B, subsection 4 and license suspension, modification and revocation pursuant to 571--78.17(456A).

78.14(2) Separate offense. Each ginseng plant or parts thereof, including wild ginseng, unlawfully harvested, dealt, or shipped shall be a separate offense. More than one person per plant may be guilty of violating this chapter.

78.14(3) Materials determined by the department's law enforcement personnel to be contraband or taken in violation of this chapter may be seized and disposed of in conformance with chapter 809 of the Code of Iowa.

571—78.15(456A) Possession. In the possession of wild ginseng, including the shipping or transporting of wild ginseng, whenever a container includes one or more parts of wild ginseng that are unlawful, the entire contents of the container shall be deemed unlawful.

571—78.16(456A) Valuation. The value of ginseng seized in violation of these rules shall be based on the current market value, as determined by the department.

571—78.17(456A) Suspension, modification or revocation of permits. Permits issued pursuant to this chapter may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the permit holder has violated any section of this chapter or continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, and the reasons for the action. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permit holder may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

571—78.18(456A) Reciprocity. Nonresident harvesters, growers and dealers from states that prohibit Iowa harvesters, growers and dealers to lawfully operate in their state are not eligible for permits issued by the department.

These rules are intended to implement Iowa Code section 456A.24(11).

Date

Richard A. Leopold, Director

(P:78n.doc/mg)

Moved – Commissioner Drees

Seconded – Commissioner Garst

Discussion – Commissioner Francisco inquired about growers permit. Law Enforcement Bureau Chief Lowell Joslin explained there are two different licenses one for growers and one for dealers. Discussion of cultivation rules was discussed. Commissioner Rettig asked for clarification of the wording used in sections 78.5(3) and 78.6(1). Commissioner Rettig also requested clarification on the resident and non-resident fee structures in sections 78.6(3) and 78.8(2). DNR Attorney Kelley Myers explained that the dealer location fees were put in place to make tracking of these dealers easier as they often times work from several locations (farmers markets, roadside stand, etc.). Commissioner Garst requested that in section 78.5(4) the wording ‘as such’ be stricken.

Motion – Carried by unanimous vote

9. Hardwood Timber Sale – Yellow River State Forest

The Natural Resource Commission is asked to approve the sale of an estimated 75,120 board feet of mixed hardwood trees at the Yellow River State Forest. The sale consists of 430 trees.

Species	Volume	# of Trees
Red Oak	36,960	152
White Oak	17,400	120
Bur Oak	120	1
Hard Maple	2,400	21
White Ash	2,980	19
Elm	260	2

Basswood	1,200	11
Aspen	12,600	86
Cherry	140	2
Hickory	1,060	13
Total Sale Volume	75,120	427
Total # of culls	27	27

An even-aged management system will be used in accordance with the Yellow River State Forest Management Plan to remove the stand by clear-cutting. The harvest will allow sunlight to stimulate the growth of oak seedlings already present on the site. Prescribed fire may be used periodically as a management tool to stimulate oak regeneration and control competing vegetation after the harvest.

A natural areas inventory was conducted, and there are no known threatened and endangered species in the harvest area. Many aspen and oaks in this stand are declining due to disease. Harvesting and regenerating this stand will help prevent the spread of disease throughout the surrounding forest.

Wildlife den trees will not be marked and will be left standing. Best management practices (BMP's) will apply to the site. No tops or harvesting residue will be left in adjacent waterways. Harvesting is to occur only when ground is firm or frozen to minimize soil disturbance. Skid trails and landing areas will be repaired following the harvest. No skid trails will be allowed in the SMA (within 50 feet of the adjacent waterway) except at designated stream crossings.

The following bids were received for the sale:

Company	Location	Amount of Bid
Dan Jones Logging	Waterville, IA	\$27,665.00
Grau Logs & Lumber	Elkader, IA	\$24,127.00
Nelson Hardwoods	Prairie du Chien, WI	\$22,676.00
Wilson Custom Tree	Cresco, IA	\$19,400.00
Buffalo Lumber and Tie Co.	Fountain City, WI	\$18,280.00
Jones Wood Heating	McGregor, IA	\$17,973.00
Kendrick Forest Products	Edgewood, IA	\$16,528.00
Wieland & Sons Lumber Co.	Winthrop, IA	\$11,340.00

The Commission is requested to approve a contract with the high bidder, Dan Jones Logging for \$27,665.00.

Moved – Commissioner Francisco
Seconded – Commissioner Drees
Discussion – Commissioner Garst asked how many acres the area was. Two separate stands one being approximately 4 acres the other 3.5 acres.
Motion – Carried by unanimous vote

10. Harwood Timber Sale – Preparation Canyon State Park

The Natural Resource Commission is asked to approve the sale of an estimated 306,000 board feet of mixed hardwood trees at Preparation Canyon State Park. The sale consists of 150 acres of tornado damaged trees. 76 of the trees are black walnut and the remaining species include bur oak, ash, locust, elm, basswood, and hackberry.

On June 11, 2008, a deadly tornado destroyed approximately 150 acres of forest in Preparation Canyon State Park. The park is now littered with debris and downed trees as a result of the storm. Salvage logging is the most efficient and cost-effective means of cleaning up the damaged trees. Most of the native oak and walnut trees were destroyed. These trees need to be replaced in order to retain the benefits the park offers to a large number of wildlife species and the public.

Approximately \$15,000 - \$20,000 of the revenue generated from the sale will be used to replace oak and walnut trees on the 150 acres that was destroyed. The planting will be done under the direction of state park staff with assistance from DNR Foresters Jeremy Cochran and Brent Olson.

The following bids were received for the sale:

Company	Location	Amount of Bid
Wilson Custom Tree	Cresco, IA	\$96,651.00
Reed Logging	Woolstock, IA	\$86,600.00
Lansing Forest Products	Lansing, IA	\$65,914.00
Hindman Logging	Winterset, IA	\$38,640.00
Esaias Logging	Red Oak, IA	\$30,000.00

The Commission is requested to approve a contract with the high bidder, Wilson Custom Tree, for \$96,651.00.

NOTICE OF HARDWOOD SALVAGE TIMBER FOR SALE Preparation Canyon State Park SALVAGE SALE

The State of Iowa is offering for sale 150 acres of trees of which 76 are black walnuts and have approximately 28,500 board feet. The remainder of species include Bur Oak, Ash, Locust, Elm, Basswood, and Hackberry with approximately 277,500 board feet Scribner (more or less). These trees are located in Preparation Canyon State Park. The Walnut trees that we were able to find are marked with blue paint. The trees are north and east of the entrance road into the park and eastwardly throughout the park for about 1/3 mile width. The park is located, in Section 24 of Sioux Township (T82N, R44W) in Monona County. Please see the enclosed map. Bidders should satisfy themselves by examination as to the quality and quantity of timber offered. Below is a table of species and content.

Sealed bids will be received until 1:00 p.m., Friday, November 14, 2008, at which time bids will be opened and the sale awarded to the highest bidder, except that the seller reserves the right to reject any or all bids.

Mail or deliver bids to Brent Olson, Area Forester, Loess Hills State Forest, Box 158, 206 Polk St., Pisgah, IA. 51564. Phone 712-456-2924. Telephoned bids will not be accepted. Bids will be opened at the Loess Hills State Forest Visitor Center Headquarters.

The successful bidder must execute a timber sale contract with the State of Iowa by December 5, 2008, and make payment at that time also. Trees must be removed by March 31st, 2009. Liability insurance is required. Buyers must be bonded.

Special Conditions

1. Logging and transporting of logs will be permitted only when the ground is firm.
2. Trails and access lanes, rivers, and streams must be left free of tops and debris. All trails must be left smooth without ruts.
3. The areas are open to logging activities from October 1st to March 1st. or in the summer months if dry and firm soil conditions exist.
4. The area manager, Brent Olson must be notified when the logger is operating on the area.
5. Trees marked must be cut and dropped.
6. When near the fringe of the damaged area, if trees have more than 50 % crown, leave them.
7. Best Management Practices are to be followed.

For further information, contact Brent Olson at 712-456-2924.

Amount bid for 150 acres of Tornado Salvaged Trees on the Preparation Canyon State Park SALVAGE SALE.

\$ _____

Date

Signature of bidder

This bid must be signed by the person submitting the bid. Please write “sealed bid” on the outside of the envelope so it will not be opened by mistake.

Moved – Commissioner Kircher

Seconded – Commissioner Kramer

Discussion – Commissioner Bird asked about possible reimbursement of tree value from FEMA. It was explained that forms have been filed but no decision from FEMA has been received.

Commissioner Bird commended staff for their work at the scout camp and helping them with their sale, it was very good public relations. The DNR Forestry Bureau is currently working with Iowa State University on a study to reestablish the stands into the area. Commissioner Francisco thanked staff and asked about prairie restoration. Commissioner Kircher asked if \$20,000 would be enough to replace what trees were lost and where the remaining funds go. It was explained that the excess funds would go to the Parks Bureau.

Motion – Carried by unanimous vote

11. Chapter 61, State Parks and Recreation Areas – Notice of Intended Action

The Department requests Commission approval for publication of a Notice of Intended Action to amend Chapter 61 “State Parks and Recreation Areas.” The amendment rescinds subrule 61.7(2) in order to restructure the subrule to include a new paragraph. The new paragraph provides a provision to allow persons to swim outside the designated swim area from sunrise and sunset by registering at a state park or recreation area. The new paragraph also provides conditions the swimmer must follow for visibility purposes. Those conditions include that the swimmer must be accompanied by a person in a vessel and that the swimmer stay within 20 feet of the vessel at all times. In addition, the vessel must display a 12 inch square, bright orange flag which can be seen all around the horizon.

These changes are a result of a petition for rule making the Department received from a triathlete requesting a rule change to allow triathlete the opportunity to train in state park and state recreation

area lakes outside of the designated swim area. Staff met with the petitioner to discuss the request and presented information to the commission at the November 2008 meeting.

DEPARTMENT OF NATURAL RESOURCES[571]
Notice of Intended Action

Pursuant to the authority of 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The amendment rescinds subrule 61.7(2) in order to restructure the subrule to include a new paragraph. The new paragraph provides a provision to allow persons to register at a park to swim outside the designated swim area from sunrise and sunset. The new paragraph also provides conditions the swimmer must follow for visibility purposes. Those conditions include that the swimmer must be accompanied by a person in a vessel at all times and that the swimmer stay within 20 feet of the vessel at all times. In addition, the vessel must display a 12 inch square, bright orange flag which can be seen all around the horizon. These changes are a result of a petition for rule making received from a triathlete requesting a change to allow triathletes the opportunity to train in state park and state recreation area lakes outside of the designated swim area.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 3, 2009. Such written materials should be directed to the State Parks Bureau; Department of Natural Resources; 502 East Ninth Street; Wallace State Office Building; Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)242-6233 or at the State Parks Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on February 3, 2009, from 2 p.m. to 4 p.m. and 6 p.m. to 8 p.m. at the Wickiup Hills Outdoor Learning Center near Toddville, Iowa, and February 4, 2009 at 10 a.m. in the Fourth Floor East Conference Room in the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code Sections 461A.35 and 461A.44.

The following amendment is proposed.

Rescind subrule 61.7(2) and adopt the following **new** subrule in lieu thereof:

61.7(2) Beach use/swimming.

- a. Except as provided in paragraphs "b," "c," and "d" of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state parks and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.
- b. Persons may scuba dive in areas other than the designated beach area provided they display the diver's flag as specified in rule 571—41.10(462A).
- c. Persons may swim outside the beach area under the following conditions:
 - (1) Swimming must take place between sunrise and sunset.
 - (2) The swimmer must be accompanied by a person operating a vessel and must stay within 20 feet of the vessel at all times during the swim.

(3) The vessel accompanying the swimmer must display a flag, which is at least 12 inches square, is bright orange, and is visible all around the horizon.

(4) Persons swimming pursuant to this subrule must register with the park staff in charge of the area and sign a registration immediately prior to the swim.

d. Unless otherwise posted, persons may also swim outside the beach area under the following conditions:

(1) Within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach.

(2) Sailboat or other vessel passengers who enter the water to upright or repair their vessel and remain within ten feet of that vessel.

(3) All vessels, except those being uprighted, must be attended at all times by at least one person remaining on board.

e. The provisions of paragraph “a” of this subrule shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

Date

Richard A. Leopold, Director

Moved – Commissioner Drees

Seconded – Commissioner Rettig

Discussion – Commissioner Kircher inquired about registration times and staffing that early in the day. Parks and Preserves Bureau Chief Kevin Szcodronski explained that the same system used for rock climbers would be utilized; this will allow an individual to complete the form and drop it in a box at the park. They are also exploring options for online registration.

Commissioner Rettig and Commissioner Kircher both commended the Parks Bureau for the quick response to this request.

Motion – Carried by unanimous vote

12. Concession Contract Renewal – Lake Ahquabi State Park

The Department requests Commission approval for the renewal of the Lake Ahquabi State Park concession contract to Jeff Holmes (CanoeSport America) dba CanoeSport Outfitters.

Staff received the request for renewal of the concession contract at Lake Ahquabi State Park near Indianola in Warren County as permitted under Chapter 571 - 14 of the Administrative Code. Notice of intent to renew was published in the Sunday statewide edition of the Des Moines Register on October 5, 2008, and in The Record Herald and Indianola Tribune on October 8, 2008. No comments were received regarding the renewal request. The following is the current contract provisions and proposed stipulations for the renewal.

The operation is a full service concession offering snack-type food service, convenience store items, soda vending machines, bait sales, boat rental, and firewood sales.

The concessionaire will pay the following fees to the State for the concession operation (excludes open shelter rentals):

2009 - \$1,600

2010 - \$1,600

2011 - \$1,600

2012 - \$1,600

2013 - \$1,600

This renewal will extend the concession contract through December 31, 2013.

Moved – Commissioner Garst

Seconded – Commissioner Kircher

Discussion – Commissioner Rettig asked about inflation index in five year contracts. Parks Bureau Administrative Rule Writer and Concessionaire Coordinator Sherry Arntzen answered that they currently do not have an inflation index built into contracts, however they have received some requests from concessionaires to place inflation index into their contracts.

Motion – Carried by unanimous vote

13. Notice of Intended Action – Chapter 94, Deer Hunting by Nonresidents

The Commission is requested to approve this Notice of Intended Action to amend Chapter 94, Deer Hunting by Nonresidents. Chapter 94 provides the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours; areas open to hunting, licensing procedures, means and methods of taking, and transportation and reporting requirements.

The first proposed amendment adds 1,000 licenses to the quota for optional antlerless-only licenses. This change should allow more does to be taken in counties where the doe harvest needs to be increased to meet the department's deer population goals. It should also allow more former residents to return and hunt with their families and traditional groups.

The second proposed amendment changes the paragraph that requires hunters during the shotgun seasons to use hunter orange on blinds. This change makes the requirements the same for both residents and nonresidents during the regular gun season.

The third proposed amendment allows nonresidents to obtain antlerless licenses for the January Antlerless season. These licenses will come from the resident quota in those counties where the resident quota has not been filled and will go on sale to nonresidents on January 3rd. All regulations that apply to resident hunters during the January season will apply to nonresident hunters, as well. This change will allow more does to be taken in those counties where the doe harvest needs to be increased to meet the department's deer population goals.

NATURAL RESOURCE COMMISSION [571] Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 sets the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation and reporting requirements.

The proposed amendment adds 1,000 licenses to the quota for optional antlerless-only licenses. This change should allow more does to be taken in counties where the doe harvest needs to be increased to meet the Department's goals. It should also allow more former residents to return and hunt with their families and traditional groups.

The proposed amendment amends the paragraph that requires hunters to use hunter orange on blinds during the shotgun seasons. This change makes the requirements the same for both residents and nonresidents during the regular gun season.

The proposed amendment will allow nonresidents to obtain antlerless licenses for the January antlerless season. These licenses will come from the resident quota in those counties where the resident quota has not been filled and will go on sale to nonresidents on January 3rd. All regulations that apply to resident hunters during the January season will apply to nonresident hunters as well. This change will allow more does to be taken in those counties where the doe harvest needs to be increased to meet the Department's goals.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 13, 2009. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-5918 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on February 10, 2009, at 10 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should inform the Department of Natural Resources of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.8.

The following amendments are proposed.

ITEM 1. Amend subrule 94.6(2) as follows:

94.6(2) Quota applicability. The license quota issued for each zone will be the quota for all bow, regular gun and muzzleloader season licenses combined. No more than 6,000 any-deer licenses and 6,000 mandatory antlerless-only licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 any-deer and 6,000 mandatory antlerless-only licenses, no more than 35 percent in any zone can be bow licenses. A maximum of ~~3,500~~ 4,500 optional antlerless-only licenses will be issued on a county-by-county basis. The licenses will be divided between the counties in the same proportion as resident antlerless-only licenses. Hunters must designate a zone or county and season when purchasing the license and hunt only in that zone or county and season.

ITEM 2. Rescind subrule 94.7(6) and adopt the following **new** subrule in lieu thereof:

94.7(6) Hunting from blinds. No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 94.2(2), unless such blind exhibits a solid blaze orange marking visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term "blind" is defined as a place of concealment constructed, either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

ITEM 3. Adopt **new** rule 571--94.12(481A) as follows:

571--94.12(481A) January antlerless season. Beginning on January 3, nonresident hunters may obtain antlerless-only licenses for the January antlerless season specified in 571--106.2(5). Licenses will be available only in those counties specified in 571--106.6(4) until the quota provided in 571--106.6(6) is filled. All regulations specified in 571—Chapter 106 for the January antlerless season for resident hunters including limits, shooting hours, method of take, tagging and reporting requirements will also apply to nonresident hunters during this season.

Date

Richard A. Leopold, Director

Moved – Commissioner Francisco

Seconded – Commissioner Drees

Discussion – Commissioner Kircher requested clarification of ‘solid’ orange vs. camo-orange to be described. Willie Suchy from the Wildlife Bureau explained that hunter safety studies have shown that use of solid orange is best for visualization in the outdoors. Commissioner Bird asked if this change meant that nonresident licenses could be purchased at any retailer where licenses are sold. Willie Suchy replied nonresident licensing would still be done by phone.

Motion – Carried by unanimous vote

14. Lost Island Lake Restoration Project Phase I

The Commission is requested to approve an agreement with an engineering and consulting firm to be named after the 12/09/08 competitive bid selection process and provided to the Commission prior to the 12/11/08 NRC meeting.

Initial water quality and recent fisheries studies confirm an overabundance of common carp in Lost Island Lake. The Department is requesting an engineering, design, and feasibility study for the design and construction of four fish barriers and methods and management capabilities for manipulating water levels on Barringer Slough, Blue Wing Marsh, and a small portion of Lost Island Lake for the purposes of renovation and rehabilitation. The parties will enter into a one-year contract to analyze and make technical recommendations for restoration to meet water quality goals. Specific objectives of the Project include:

1. Determine the feasibility of and methods for water level management capabilities on Blue Wing Marsh.
2. Design and engineer a fish barrier system between Blue Wing Marsh and Lost Island Lake.
3. Design and engineer a fish barrier and water level management capabilities between Lost Island Lake and the portion of Lost Island Lake southwest of Clay County Road A41 (340th Ave).
4. Design and engineer a fish barrier and water level management capabilities between Lost Island Lake and Barringer Slough.
5. Determine the feasibility of and methods for water level management capabilities on Barringer Slough.
6. Design and engineer a fish barrier system downstream from Barringer Slough.
7. Provide insights and alternatives to accomplish lake restoration objectives.

Moved – Commissioner Francisco
Seconded – Commissioner Kramer

Discussion – Commissioner Rettig inquired how Ducks Unlimited (DU) a non-profit organization could be contracted for design and engineering and be allowed to bid against other Iowa businesses. It was explained that DU's consultant services were more in line with the project needs and it is for concept and initial design only not the engineering documents. Commissioner Kircher asked if there were DU had staff here in Iowa. Commissioner Rettig stated that DU does not pay governmental business taxes. Commissioner Garst said that non-profit organizations often do pay sales taxes on the part of their business that relates to their mission statement. Director Leopold explained that the DNR has contracts with many different types of entities.

Motion – Carried by unanimous vote

15. FY2009 Low-Head Dam Public Hazard Cost-Share Grant Program

The Commission is requested to approve the FY2009 low-head dam public hazard cost-share grants.

The Iowa General Assembly in 2008 appropriated \$1.2 million for low-head dam public hazard and water trails projects. One million dollars of that fund was repurposed for flood relief in mid-September, shortly before the September 30, 2008, application deadline announced in June. The reduced amount of \$200,000 in fiscal year 2009 is available to award for the low-head dam public hazard program. Chapter 30 of the administrative code implements the low-head dam safety cost-share program to support signage, dam removal, and dam modification for the benefits of navigational and recreational safety and aquatic species, including game fish. The Department received nine eligible applications requesting \$696,410. Scorers making award recommendations were John Pearson (DNR), Robin Fortney (citizen), Mark Wise (citizen), Bernie Hoyer (DNR), and Steve Hopkins (DNR). The recommended state fiscal year 2009 awards, totaling \$200,000, as determined by the scoring committee are:

<u>Project</u>	<u>Applicant</u>	<u>Amount requested</u>	<u>AWARD RECOMMENDED</u>	<u>Score</u>
Yellow River Dam	Gene Warner	\$34,750	\$34,750	96.7
Charles City Low-head Dam Enhancement Project	City of Charles City	\$366,120	\$165,250	95.4
Scott Street Dam Water Trail	City of Des Moines	\$20,000		94.6
Center Street Dam Water Trail	City of Des Moines	\$20,000		94
Center Street Dam Improvements	City of Cedar Falls	\$62,920		93.8
Cedar River Water Trail-Paramount Park Portage Construction	City of Waterloo	\$50,000		86.2

Klondike Dam Rapids Conversion Study & Concept Development	Iowa DNR, River Programs	\$9,572		85.4
Littleton Dam Removal and Stream Restoration	Iowa DNR, River Programs	\$125,000		84.8
Lakehurst Dam Canoe Slide	Jackson County Conservation	\$ 8,048		73.8

The Department recommends fully funding the top ranked projects. If a ranked project declines funding, the Department requests authority to offer those funds to the next highest scored project until all funds are spent.

Moved – Commissioner Francisco
 Seconded – Commissioner Drees
 Discussion – Commissioner Kramer asked what would happen to the project if Charles City is unable to raise the necessary funding. River Programs Coordinator Nate Hoogeveen stated that the DNR would request the authority to increase their portion of the funding but at this point do not foresee any issues. Discussion of application cycles and budgeting for projects transpired.
 Motion – Carried by unanimous vote

16. Printing Agreement for Fishing Regulations

The Natural Resource Commission is requested to approve a contract to print the 2009 fishing regulations.

The Iowa Department of Natural Resources prints 350,000 copies of the Iowa Fishing Regulations annually. These regulations are available at 1,400 license sales agents and DNR offices and parks statewide. The 36 page booklet contains rules and regulations for fishing in Iowa.

In 2007, the cost to print 350,000 copies of the Iowa Fishing Regulations and ship to 1,400 license vendors was \$59,382.63. In 2006, the cost to print 350,000 copies of the Iowa Fishing Regulations and ship to 1,400 license vendors was \$52,647.26. The 2008 cost is expected to be comparable.

Bids for printing are being processed by the Department of Administrative Services with a bid closing of December 8, 2008. Bids will be presented to the NRC on or before the December 11, 2008, meeting.

Moved – Commissioner Francisco
 Seconded – Commissioner Drees
 Discussion – Commissioner Francisco asked about the cost relation of a strictly regulation booklet with no ads vs. newspaper style with ads. Explanation of purpose behind paper selection, size of regulation book, and booklet information was discussed. Two quotes are always requested, one with ads and one without ads. Commissioner Rettig asked if the most environmentally friendly paper would be used and how the public would be informed of this paper choice. The DNR is required to utilize the Department of Administration Services (DAS) and their standards. The bid is for \$43,515 plus shipping and handling costs of \$15,000–\$20,000 at completion of delivery. This would include delivery to over 1,100 locations direct from the

printer which will save staff time as well as postage as the printer has a bulk mail rate.
 Motion – Carried by unanimous vote

17. 2009 NRC Meeting and Tour Recommendations

The Natural Resources Commission is requested to approve the following 2009 meeting recommendations:

MONTH	TOUR DATE	MTG DATE	MTG/TOUR LOCATION (county)	TOUR/PRESENTATION RECOMMENDATIONS
JANUARY	01/07/09	01/08/09	Polk	Commission information requests and/or current issues presentations.
FEBRUARY	02/11/09	02/12/09	Polk	Commission information requests and/or current issues presentations.
MARCH	03/11/09	03/12/09	Wright	Lower Morris area patch burn grazing, ISU partnership
APRIL	04/08/09	04/09/09	Story	State Forest Nursery; lead presentation
MAY	05/13/09	05/14/09	Davis	Lake Wapello cabins and lake restoration
JUNE	06/10/09	06/11/09	Delaware	Backbone State Park repairs, concessions; Manchester Fish Hatchery
JULY	07/08/09	07/09/09	Washington	Lake Darling (watershed practices on private land, in-park gully ponds, in-lake restoration measures); State park lodge, Friends' group
AUGUST	08/12/09	08/13/09	Cerro Gordo	Clear Lake (largest lake restoration project, completed dredging, marsh plans, CREP sites in watershed, storm water filter boxes in city, locals contributed over \$5m), WRP birds/Waterfowl Research
SEPTEMBER	09/09/09	09/10/09	Dickinson	Lake Okoboji area; dock management areas, Gull Point interpretation presentation/activities
OCTOBER	10/07/09	10/08/09	Monroe	Stephens State Forest (equestrian trails, biomass project), Chariton, Honey Creek Resort, Wildlife Diversity Program
NOVEMBER	11/11/09 <i>holiday</i>	11/12/09	<i>To be determined</i>	<i>To be determined</i>
DECEMBER	12/09/09	12/10/09	Polk	Commission information requests and/or current issues presentations.

Moved – Commissioner Rettig
 Seconded – Commissioner Drees

Amendment #1 –

- Moved – Change the planned November 2009 tour/meeting to the Missouri River instead to June 10th & 11th, 2009 and in November move the tour/meeting date to November 4th & 5th and go to Backbone State Park.
- Motion – Carried by unanimous vote

Amendment #2 –

- Moved - Leave January meeting as scheduled and any NRC Commissioners that are able to attend the following week events (November 14th Legislative breakfast &

EPC/NRC joint meeting) do so.

- Motion – Carried by unanimous vote

Discussion - of what type of items would be discussed at the joint EPC/NRC meeting in January and if there would be another joint meeting mid to late May 2009.

Motion – Carried by unanimous vote

18. Donations

The Natural Resource Commission is requested to approve the following donations:

Donation to:	Amount	Description	Donation Provided by (Name/Org):
REAP Open Spaces	20.00	in memory of Karen Ackerman, Ken Herring's sister.	anonymous
REAP Open Spaces	30.00	in memory of Karen Ackerman, Ken Herring's sister.	Diane Ford-Shivvers
REAP Open Spaces	50.00	in memory of Karen Ackerman, Ken Herring's sister.	Tammi Kircher
Dolliver State Park	50.00	as a general donation which was used toward lamps for the cabins	Brian and Linda Smith
Lake Macbride State Park	75.00	for ecosystem management on behalf of Paul Julius	Cedar Rapids Community School Executive Council
the Fish and Wildlife Trust Fund	100.00	a general donation	Mary Kahrs
Iowa State Parks	100.00	a general donation	David and Helen Duncan
Yellow River State Forest Campgrounds	185.00	a park bench and plaque in memory of Don Dietz's brother	Don Dietz
Pikes Peak State Park	277.00	a limestone bench dedicated to your parents for their anniversary	Kristine Heideman
IA DNR Law Enforcement Bureau	962.00	of three lighted hazard buoys for use in the Iowa Great Lakes	Okoboji Protective Association
Volga River Recreation Area	1,237.95	gas powered self propelled trimmer-mower that will assist in managing vegetation ordinary trimmers cannot	Joyce and Warren Trotter
Viking Lake State Park	1,818.00	a park bench and two concrete tables in memory of Lawrence Cavner	Lawrence Cavner Family
IA DNR Law Enforcement Bureau	1,940.00	two Motorola EX 600 portable radios for use by Water Patrol Officers	Iowa Great Lakes Water Safety Council
IA DNR	2,000.00	toward the dedication ceremony at Honey Creek Resort State Park	Wicks Construction
IA DNR	5,000.00	toward the dedication ceremony at Honey Creek Resort State Park	Hansen Construction

The following is information for the Commission regarding land related agreements previously approved during land acquisition presentations.

Donation to:	Amount	Description	Donation Provided by (Name/Org):
IA DNR	an undisclosed amount	for a conservation easement in Hamilton County	David and Annette Volkers
IA DNR	500.00	for land in Dickinson County as an addition to Elinor Bedell State Park	The Hoiem Family
IA DNR	32,500.00	for a below market value sale in Winneshiek County as an addition to the Upper Iowa River WMA	Mark Ackelson Iowa Natural Heritage Foundation
IA DNR	100,000.00	for land in Woodbury County as an addition to Stone State Park	Mark Ackelson Iowa Natural Heritage Foundation

Moved – Commissioner Francisco
 Seconded – Commissioner Drees
 Discussion – none
 Motion – Carried by unanimous vote

19. General Discussion

Commissioner Bird would like to address the need for better communication to the NRC Commissioners. Melissa Speed will be requesting an outlook global contact group be created that will allow DNR staff to easily inform the commission on important pertinent information. Director Leopold apologized to the commission as he thought they were getting emails in reference to new releases and/or bulletins.

Commissioner Bird suggested that in the interest of meeting time the exploration of Honey Creek sub committees be considered again. The Honey Creek update lasted an hour at today's meeting. Director Leopold has advised Michelle Wilson at this point in time the more information provided to the commissioners the better. Commissioner Rettig suggested any information that could be provided via email/mail be provided to the Commission prior to meetings for review. Commissioner Kircher suggested moving the Honey Creek update to end of the NRC meetings. Commissioner Rettig stated that it had been that way but that by doing so the construction and engineering staff had to remain at the meeting all day and it was easier to complete all updates of this type at one time. It was agreed upon by the commission that the magnitude of this project is a priority and until reporting becomes easier to understand it will remain a longer topic of discussion at meetings.

Commissioner Kircher reported that she had attended the Shimek State Forest public presentation and wanted to complement the forestry staff on the professional presentation they gave to 35-38 attendees. She also attended the ethics class and found it very interesting. Also a reminder that Ducks Unlimited has extended an invitation to the Saskatchewan Spring Tour May 26-29, 2009.

Commissioner Garst had the privilege of going on the Governor's hunt and found it very enjoyable. She was asked over the last deer hunting weekend that she attended to convey that hunters are having issues with deer tags falling off; they need to be better as they cost money and are a lot of hassle. Also she received a comment for future consideration that someone with a youth turkey tag that does get a turkey during the youth turkey season is allowed to use it into the regular turkey season to give youth further opportunity. This is currently the way the youth deer license/tags work. Commission Garst also expressed frustration stemming from the forestry tour in November; she would like to ask that the department to consider doing long-term research on the theory on the best way to protect oak trees. She asks to look at how many acres of oak are managed under current department theories on how to manage oak relative to acres of oak in the state of Iowa. She would like to see statistics on the acres of treatment sources to the size of the problem, cost effectiveness of clear cutting to get oak stands in the state verses burning, and what kind of damage fire may do to the sale value of logs. Director Leopold suggested Forestry Bureau Chief Paul Tauke attend the next meeting to present an in depth explanation. Conservation and Recreation Division Administrator Ken Herring stated that Paul Tauke has a very nice presentation on the concerns of the loss of oak and oak regeneration in Iowa. Commissioner Bird suggested that the meeting in April at the State Forest Nursery be an option for a presentation and opportunity for further discussion on these issues.

20. Items for Next Meeting

Next Meetings:

January 8 – Polk County

February 12 – Polk County

Adjourn:

Moved – Commissioner Francisco

Seconded – Commissioner Kircher

Motion – Carried by unanimous vote